REMARKS

This is in response to the office action of December 28, 2006. An RCE has been filed to enable consideration of all the information applicants disclosed, now and in the past.

Information Disclosure Matters

Examiner previously refused to consider certain Information Disclosure Statements (IDS). Hereby, and by a separate document enclosed herewith, namely "Letter - Information Disclosure Statement" applicants request that examiner review and consider the documents referred to in the IDS forms 1449 or substitutes which are enclosed.

Some of the litigation-related documents listed in the re-submitted IDS forms, as detailed below, were earlier submitted, as reflected in the Transaction History. Thus, they are not re-submitted. Other documents are being newly submitted.

A part of this instant document is the appended a copy of the September 22, 2006 declaration of Ronald Brochu. This was previously submitted. In the 12/28/06 office action, examiner stated at Section 3 that said declaration "is defective because it does not state the patent rule under which it is executed." If there is such requirement to state a rule, applicants are unaware of it; and the examiner is requested to be more specific if she maintains her position. See the next paragraph and quote. (The Brochu declaration dated 22 September 2006 was previously appended to and referred to in the response received by PTO on 25 September 2006. A further copy of the very same declaration was received by the PTO on 27 September 2006 with an explanatory letter.)

The Brochu September 2006 declaration is being submitted now, as it was previously, in conformance with 37 CFR 1.132, that is, in support of applicants' traverse of the rejection. Applicants note that "It is the responsibility of primary examiner to personally review…declarations…. All affidavits or declarations presented which do not fall within or under other specific rules are to be treated or considered as falling under this rule." MPEP 716. Applicants respectfully demand that examiner treat the declaration in accord with PTO procedure and take it into consideration.

The September 2006 declaration of Ronald Brochu introduces certain facts that the examiner should take into account. In part the declaration describes the prior art in more detail, shows the technical details, problems or teachings-away which show that the combination of prior art which examiner says is not heretofore readily feasible or obvious, and describes surprising advantage of inward flared slots. In further part, the declaration addresses purported clogging of leaching chamber perforations. More specific reference to the declaration is made below.

Applicants disclose and enclose newly submitted prior art, as listed in IDS form(s) which accompany the IDS transmittal letter. The newly submitted art includes some further patents, and an extract from the reference book by Johnson. The latter is submitted in view of examiner's reliance on Kothmann, and not because applicants think it is material.

The Johnson publication is concerned with "development" or optimization of a newly installed well, to condition the sand around the well point. It also incidentally describes a well screen having inward flared slots i.e., a screen made from spiraling wedge shape cross section wire. That kind of device is described at Col. 1, lines14-31 of examiner-cited Kothmann '892. The right-side picture in Fig. 276 shows how particles build up at the slot openings, when the water well is functioning in its intended manner, to draw water inwardly from the soil. Note how the particles build up in bridge-fashion around the outer opening of the slot.

Obviousness Rejection under 35 USC 103

The claims stand rejected under 35 USC 103, based on DeTuillo '925, Nichols '661 and Kothmann '892, Schlafly '442, in various combinations. The rejection of the independent claims 21, 29 is based on modifying DeTuillo in view of Kothmann (Page 5, bottom); and the rejection of claim 26, is based on modifying DeTuillo in view of Nichols '661, to provide slots (Page 6, top).

Rejection of claims 21, 29

At page 5 bottom, the rejection is based on modifying DeTuillo chamber in view of Kothmann

'892. Examiner says that the motivation/reason to modify DiTuillo is to make the DeTuillo perforations flare inwardly would be to preclude clogging of perforations. (Applicants are aware of KSR vs. Teleflex and make their argument in its context.)

Applicants claim a leaching chamber having horizontal slots, not simply perforations; where the slots flare inwardly from the outside surface to the inside surface; where the slots slope downwardly, and where the slots are on an inwardly sloped and upwardly curving sidewall. In the end the rejection can only be sustained if the whole combination which applicants claim is obvious. For convenience of presentation, applicants dissect and argue separately subsets of the rejection. If any one individual subset is not obvious, then the whole claimed invention cannot be obvious.

Examiner admits at Page 4 that DeTuillo does not have slots as they are claimed, i.e., horizontal opening greater than vertical opening (while still seeming want to avoid the plain common English language and engineering meaning of the word "slot" and to call round holes "slots"). Applicants admit that Kothmann shows slots. However, there is simply no sustainable reason for modifying a DeTuillo chamber to provide it with Kothmann slots, however, they may flare.

Applicants argue as follows:

1. The two references are not logically combined, or would not produce the claimed product.

(a) Applicants submit that Kothmann is related to divergent technology, and is not logically combinable with DeTuillo (or Nichols), to form a basis for rejection. Kothmann relates to a well point and associated well screen which is configured to withdraw water from the soil. Well drilling and water extraction is not the same as wastewater dispersal, where wastewater flows outwardly, which is the function of applicants' claimed leaching chamber.

(b) Another reason is that DiTullio says there are particles in the water inside the chamber and that they have to be flowed outward. Col. 1, line 55-65; Col. 2, line 11-13; Col. 5, line 26-30) and that "The perforations 60 facilitate flow of effluent out of the drainfield gallery." Col. 5, line 45-47. So the art tells us that DiTullio is flowing water with particles out, whereas Kothmann is flowing water in, without particles. Thus what is done when drawing water in wells, which drawing brings along while keep particles out, provides no basis for what to do when the water is flowed in the opposite direction Furthermore, if the DiTuillo perforations facilitate flow, why would there be a need to modify them?

(c) Kothmann slots run vertically. DeTuillo round holes have no orientation. So, if the Kothmann slots are put on the DeTuillo chamber, the result would be vertical slots, and that would not be the invention.

(d) Kothmann teaches flared slots all around the device, and does not teach to omit slots on the top of the device. With respect to this and (c), examiner must consider all the teachings of the reference. There is no reason to re-orient Kothmann slots run horizontally along the sidewalls of a DiTullio chamber, rather than vertically as taught by Kothmann (Col 4, lines 55-64). There is no motivation to omit having slots at the top of the chamber. When the references are fairly combined they do not result in the invention, notwithstanding there are still other features not taught, as addressed next.

(e) Kothmann is flowing fluid inwardly and Kothmann slots are configured to filter (stop the particles) from flowing inwardly; whereas in DeTuillo, there is no aim to filter inward flow, and therefore there is no reason to use Kothmann slots.

2. DeTuillo teaches round holes and there is no sustainable reason to change those round holes into Kothmann (or Nichols) slots. As known in the art, if any DiTullio chamber, having round holes is buried in soil (as compared to crushed stone) for leaching chamber use, it is necessarily covered with geotextile. See declaration of Brochu, paragraph 2. Using geotextile eliminates any reason to shape DeTuillo openings differently because the geotextile prevents soil from reaching the holes.

3.1 At page 5 bottom, the rejection is based on the motivation/reason for modify DiTuillo, to make the DeTuillo perforations flare inwardly in accord with Kothmann, *would be to preclude clogging of perforations*.

There is no support for a "prevention of clogging" reason. Examiner at Page 8 cites Kothmann

‘892 at Col. 1 as having referred to a clogging problem. However,

(a) this is an illogical citation because the rejection is based on modifying a DeTuillo chamber to improve it, whereas the clogging problem reference is about prior art well screens, not DeTuillo chambers; and

(b) the Kothmann reference to clogging is about prior art well point screens having un-flaring slots (parallel slot walls);

(c) DiTuillo chambers, have round holes to which slot-clogging is irrelevant, as above at No. 2, and the DeTuillo holes already “facilitate flow”; and

(d) See also the September 2006 declaration of Brochu at Section 6 where clogging is discussed as not being an ordinary factor/problem.

3.2The declaration of Brochu, particularly at paragraphs 3 and 4, gives factual information about why there is a motivation/reason against having a DeTuillo chamber with inward flaring perforations.

3.3 Here and with respect to the below, Examiner is required to have a reason and to explain what that reason is and the basis for it, to sustain the rejection. If examiner maintains the rejection she is requested to cite such reason and basis, which cannot be the clogging she mentions. Lacking a basis of rejection, the claims must be allowed.

4. Applicants claim curving sidewall in combination with other features, and there is no reference which shows that feature. In the rejection per se there is no citation of that element. However, applicants assume that the Response to Argument portion at Pages 8-9 applies. There, examiner contends the upper part of DeTuillo ‘925 chamber comprises a curving sidewall.

In response: applicant is entitled to, and has, defined the terms and descriptive words of their invention and claims are interpreted in light of that, with respect what is a sidewall and top. In the rejection, Examiner cannot redefine components in terms suited to support a rejection.

Furthermore, examiner’s characterization is inconsistent with DeTuillo 5087151 which is incorporated by reference. The DeTuillo ‘151 chamber has a strong resemblance to the DeTuillo

‘925 chamber. DeTuillo ‘151 defines in Fig. 1, the sidewalls 16 and top wall 14 (i.e., the top). Col. 4, lines 1-27. The sidewalls of DeTuillo ‘925 can only be said tobe planar, as indicated by Fig. 5. DeTuillo teaches a planar sidewall, and examiner is arbitrary to say the patent shows a curved sidewall.

Since there is no curve in the DeTuillo sidewall (or the planar Nichols sidewall). Thus there is no basis for rejection of a combination of features which includes that feature.

5. Applicants claims include downward sloping slot axes, and there is no reason to so modify DeTuillo’s chamber in such manner.

At page 6, first full paragraph, the rejection says that modification of the device of DiTullio to have the perforation axes slope downwardly, is obvious since the motivation/reason would have been to direct the effluent downwardly as it exits the exterior of the chamber. However, this is a reason found by examiner for which applicants know of no basis in the art. An equally, or more, obvious motivation is to flow water sideways.

Thus, Applicants request examiner to state the basis for such reasoning/motivation, if she sustains the rejection of claims based on such. Furthermore, given the low flows associated with chambers it is not obvious that down-sloped perforations would effect a direction of flow to the water any more than would gravity for any kind of hole.

6. Examiner has no basis for rejecting yet another limitation, namely that the flared edges of the slots run from outside to inside. Combining Kothmann ‘892 with DeTuillo would produce a chamber with a compound slot, i.e., as shown in Kothmann Fig 3, 4, and that is not applicants’ claimed invention.

Examiner says at page 9 bottom that such “single slot” limitations are not recited in the rejected claims. Examiner is mistaken. Exemplary claim 21 embraces “slots that flare inwardly from the exterior surface of the sidewall to the interior surface of the sidewall”. Thus, the end points of the flare of the slot are the inside and outside surfaces and not in between. Examiner must consider the

Kothmann reference as a whole, and cannot discard part of it to suit the rejection.

Applicants have provided factual evidence which negatives examiner's bases and reasons for obviousness. It is incumbent upon examiner to support any continued rejection with factual information, of record or newly found, and more sustainable reasons.

Rejection of claim 26

The claim 26 is rejected based on the combination of DeTuillo and Nichols. Office Action at Page 7 bottom; further modified in accord with Schafly '442.

With respect to the many combined elements which claim 26 has in common with claims 21 and 29, applicants hereby incorporate by reference their remarks above about claims 21 and 29.

As above, it is not obvious to have the leaching chamber combination which includes horizontal slots, not simply perforations, where the slots flare inwardly from the outside surface to the inside surface, where the slots slope downwardly, and where the slots are on an inwardly sloped and upwardly curving sidewall. In the combination of claim 26, applicants claim a particular upstanding fin, for which no art has been cited and no rejection has been specified.

At last paragraph on page 6, examiner states that the reason to modify DeTuillo by Nichols '661 is to increase the rate of flow passing through the chamber sidewalls. As examiner knows from the prior art, sidewall designs are varied and there are numerous countervailing factors. For instance, to make slots bigger increases flow, but also weakens the sidewall and can let soil enter. For instance, flow depends on the amount of open area. Furthermore, with open-bottom chambers, the preponderance of the exposed area is at the bottom of the chamber.

In this instance, to sustain the rejection, there has be reasoning and supporting citations (a) that shows there is a reason or need to increase DeTuillo sidewall flow, i.e., that it is that it is inadequate; and (b) a fact that shows in fact sidewall flow would be increased by adding Nichols slots and further modified by Kothmann.

The fin related construction of the combination

With respect to adding the fin of Schafly to the chamber of DeTuillo as modified by Nichols: Examiner says the reason is "to facilitate anchoring of the device and to retain additional means for controlling and retaining effluent." Page 8.

1. Applicants submit that none of the devices of the combination are anchored and that is a foreign concept to the art at hand.

2. Applicant request that she provide the basis for showing that a fin would help anchoring.

3. The cited DeTuillo and Nichols chambers are aimed at flowing water through their respective walls. Again, DiTullio says "The perforations 60 facilitate flow out of the drainfield gallery." Col. 5, line 47+. All the chambers have open bottoms, which undercuts any notion about "controlling" (limiting) flow, by the fin.

4. All the devices in the cited references have perforations which are higher than the elevation where any fin would be; so there would be no effect of a small fin on controlling effluent from the openings.

With further respect to the fin related construction of the combination

Applicants' claimed chamber includes (a) base flange (b) upstanding fin at outer edge; (c) slots with down slope axes; and, (d) where some of the slots have axes that intersect the fin.

As described in the application and as is familiar to artisans, such a chamber could not be feasibly fabricated in the prior art, i.e., without inward flare perforations. It is applicants' molding apparatus and method invention which now enables slots to be made by slides in the inner or core part of the mold. See declaration of Brochu for further support. Absent that or some other invention, the invention chamber could not be feasibly made. Therefore, it cannot be obvious.

The Schafly '442 perforations are all higher than the fin at the base flange 2; and they do not have basic axes which are either downwardly sloped or which intersect the fin. There is no disclosure nor suggestion in the prior art about a chamber having perforations of any kind which perforations are at an elevation which is lower than the top of a fin.

Applicants request examiner to support the bases for rejection, as she must do. If examiner maintains an obviousness rejection, applicant requests her to specifically state where she finds the reason of motivation for the combination, and how the combination does control flow.

Other factors leading to patentability of the independent claims

The examiner ought to weigh these factors which negative a finding of obviousness with respect to the combination.

A DiTullio chamber is only feasibly made of sheet material and by thermoforming. Col. 6, line 6-12. , with reference to the declaration of Brochu, holes in such DiTullio kind of thermoformed chambers have no particular shape or orientation.

Brochu September declaration at paragraph 5 states the unexpected and surprising results, in enabling reduced wall thickness and better nesting and better manufacturing. That emphasizes what is found in the application at pages 7 and 8 of the application. An unexpected and surprising result is evidence of nonobviousness.

The dependent claims

As to claims 22, 24, 30 and 33, and a flare angle of 2-12 degrees, the general conditions of an inward flare are only disclosed by the Kothmann reference. It is silent on what is the included angle. There is no suggestion that Korthmann's included angle has any function other than enabling a second serial slot opening (i.e., enabling opening 34).

Lastly, applicants' flare angle is claimed in combination with a horizontal slot and inwardly curving sidewall, where there is a criticality in degree of flare, as taught by the application with respect to STA (e.g., pages 6-9), which criticalities are not present for Kothmann's slot if applied to DiTuillo.

Examiner says the dimensions of Kothmann cannot be used. Although the shape can be used, as obviously the examiner is doing, and that is a function of the dimensions. However, since examiner cannot not use Kothmann or other drawing-related inventions, then this leaves examiner with no basis for rejection of the foregoing dependent claims and they should be allowed.

In any case, the claims 22, 24, 30 and 33 should be allowable as a preferred embodiments of a novel and nonobvious parent claim. In re Fine 5 USPQ2d 1596 (Fed Cir. 1988)

As to claims 25, 23 and 31 which relate to the slot interior opening height of 0.105-0.200 inch, Nichols teaches 0.25-0.35 inch perforation interior surface openings. Any teaching of optimization would be within the range of Nichols, not significantly outside it, as claimed. No good basis for rejection of these claims has been given.

At page 6, with respect to why slot heights of 0.105-0.200 inch are obvious, the rejection states that "The motivation would have been to effect a desired rate of discharge from the chamber." Effect in what way? Increase or decrease? Any effect of slot height ignores the number of slots which are present on the sidewall, and which increase in number when slots have smaller openings. Second, DiTullio says "The perforations 60 facilitate flow out of the drainfield gallery." Col. 5, line 47+ That is a teaching toward larger, not smaller, slots than are taught in the art.

In the rejection, there is no prima facie case for obviousness. If examiner maintains this part of the rejection she is requested to state the good basis and reasoning why a prior art height of 0.25-0.35 inches teaches 0.105-0.200 inches. Or the claims should be allowed.

In any case, the claims 25, 23 and 31 should be allowable as preferred embodiments of a novel and nonobvious parent claim.

Accordingly, reconsideration and allowance of all the claims is respectfully requested.

Respectfully submitted,
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